

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13104 of 2025

Aarpee Infra Projects (P) Ltd. a company registered under the Companies Act, having its Corporate Office at Room No. 201, 2nd Floor, Infinity Square, Beside PCM Bus Terminus, 2nd Mile, Sevoke Road, P.O. Siliguri- 734001, Dist. Jalpaiguri (West Bengal) through its Authorized Signatory Virendra Prasad Singh, (aged about 62 years) (Male) son of Sri Ram Pukar Singh, Resident of Tengrahan Gosalpur, P.S. Muzaffarpur, Dist. Muzaffarpur- 84311.

... .. Petitioner

Versus

1. The State of Bihar Public Health and Engineering Department, Government of Bihar, PHED Bhawan, Bailey Road, Patna-800015 through its Secretary.
2. The Secretary, Public Health and Engineering Department, Government of Bihar, PHED Bhawan, Bailey Road, Patna-800015.
3. The Engineer-in-Chief-cum-Special Secretary, Public Health and Engineering Department, PHED Bhawan, Bailey Road, Patna-800015.
4. The Chief Engineer, North Bihar Wing Public Health and Engineering Department, Muzaffarpur.
5. The Chief Engineer, North Bihar Wing, Public Health and Engineering Department, Purnea.
6. The Executive Engineer, Public Health and Engineering Department, Jhanshpur.
7. The Executive Engineer, Public Health and Engineering Department, Forbesganj.

... .. Respondents

Appearance :

For the Petitioner : Mr. Alok Kumar Agrawal, Advocate
For the Respondents : Mr. Raghwanand, GA-11

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

7 28-04-2026

Heard learned counsel for the parties.

2. In the present petition, the petitioner seeks the following relief(s):-

*“(i) For issuance of appropriate Writ(s),
Order(s), Direction(s) commanding the*



Respondents not to disqualify the petitioner in short Tenders bearing NIT No. 06/2025-26/ (LOT/PRD) and NIT No. Re1_09/2025-26(SBF/SBA/SB-Fe) of National Competitive Bidding for the tender issued by the Respondents Public Health Engineering Department, Government of Bihar;

(ii) For declaration that since the order of debarment issued by Government of West Bengal, vide Memo No. 21/W-309 dated 10.01.2024 of National Highway Circle No.-II, Public Works (Roads) Directorate, Birbhum (W.B.) was confined to the future tenders issued by Ministry of Road Transport and Highways, Government of India or its implementing agencies for a period of two years with effect from 07.12.2023 and will not automatically debar/blacklist the petitioner from present tender floated by Public Health Engineering Department, Govt. of Bihar by invoking Clause 4.8 of ITB of Tenders in question in view of the Judgment passed in HCL Infosystem Limited V. The Bihar State Electricity Board & Ors. Reported in 2013(2) PLJR 753 which was further affirmed by the Hon'ble Division Bench of this Hon'ble Court in L.P.A. No. 517 of 2013 which held inter-alia (Para 30) that blacklisting/ debarment order must be limited to that very organization and it would not be open to any other public undertaking or the State Government of the Central Government to act upon the basis of such blacklisting order passed



by such organization and also in view of the order dated 16.08.2019 and 26.04.2021 passed in C.W.J.C. No. 16346 of 2019 (Aarpee Infra Projects Pvt. Ltd. Vs. The State of Bihar & Ors.) as the said exercise of power is violative of Article 14 and 19(1)(g) of the Constitution of India by resorting to clause 4.8 (instruction to bidders: Sec. I General) of the Bid document or any other clause or clauses of Standard Bidding Document (SBD) relating to disqualification based on debarment or blacklisting by National Highway Circle No.-II, Birbhum, Government of West Bengal;

(iii) For a declaration that any presumption of disqualification or debarment of a Tenderer on the ground that it has been debarred by any other organization in any State in India on some ground will be only arbitrary, unreasonable and will also hit for violation of principles of natural justice;

(iv) For directing the Respondents to consider the Petitioner in the present bidding issued by the Respondent and not to disqualify on this ground if the Petitioner is otherwise qualified for participation in the bid; and/or to pass such other relief or reliefs for which the petitioner is found entitled to the facts and circumstances of the present case.”

3. The present case arises out of a misapprehension expressed by the petitioner, a Private Limited Company engaged



in execution of works contracts.

4. A debarment order, bearing Memo No. 21/W-309 dated 10.01.2024, was issued against the Petitioner by the Superintending Engineer, National Highway Circle No.-II, Birbhum, Government of West Bengal, debarring it for a specified period from participating in tenders issued by the Ministry of Road Transport and Highways and its implementing agencies.

5. Subsequently, the Respondent–Public Health Engineering Department issued Notice Inviting Tender bearing NIT No. 06/2025-26 LoT/PRD dated 21.07.2025 for execution of piped water supply schemes in District Madhubani. Another Notice Inviting Tender bearing NIT No. Re1_09/2025-26 dated 21.07.2025 was also issued for similar works in District Araria.

6. The petitioner has instituted the present writ petition without participating in the aforesaid tender processes, in the backdrop of the said debarment order and conditions stipulated in the tender documents.

7. Learned counsel for the petitioner submits that the debarment order dated 10.01.2024 is limited in its operation to tenders issued by the Ministry of Road Transport and Highways and its implementing agencies and does not extend to tenders



floated by the Respondent–Public Health Engineering Department. It is further submitted that the Clause 4.8 of the Instructions to Bidders cannot be construed so as to automatically incorporate or give effect to a debarment order passed by another department, in absence of any independent decision by the Respondents.

8. Reliance is placed on the judgment of the Hon'ble Supreme Court in *M/s. Erusian Equipment & Chemicals Ltd. vs. State of West Bengal & Ors.*, reported in AIR 1975 SC 266 and *M/s. HCL Infosystems Ltd. vs. Bihar State Electricity Board* reported in (2013) 2 PLJR 753, as well as subsequent decisions, to submit that debarment by one authority cannot *ipso facto* operate as a bar in respect of other departments.

9. *Per contra*, learned counsel for the respondents submits that the present writ petition is in the nature of seeking pre-emptive protection, without there being any adverse action. is being asked for by the petitioner. It is submitted that the petitioner has admittedly not participated in the tender process in question. It is submitted that the tender process has since been concluded and the work has already been awarded to L-1 bidder amongst the responsive bidders. In such circumstances, it is submitted that the issue raised in the present writ application has



become purely academic.

10. It is further submitted that this Court, vide order dated 04.09.2025, had granted interim protection to the petitioner; however despite such protection, the petitioner did not participate in the tender process by submitting its bid.

11. The limited issue which arises for consideration is *whether, in the facts and circumstances of the present case, a writ application under Article 226 of the Constitution is maintainable at the instance of a petitioner who has neither participated in the tender process nor suffered any actual disqualification or debarment, but seeks to invoke the writ jurisdiction merely on the basis of an apprehension of such disqualification or adverse action?*

12. The jurisdiction of this Court under Article 226 of the Constitution of India is extraordinary, discretionary and essentially remedial in nature. It is primarily exercised for enforcement of legal and fundamental rights against actions of the State or its instrumentalities. The writ jurisdiction is not intended to be invoked in abstract, hypothetical or speculative circumstances, but only where there exists a real, live and enforceable cause of action arising from a concluded or imminent administrative action.



13. Broadly, writ petitions under Article 226 are maintainable in the following situations: (i) where there is violation of a fundamental or legal right; (ii) where there exists a clear cause of action involving actual or imminent infringement of rights; (iii) where State action is arbitrary, illegal, mala fide or suffers from procedural impropriety; (iv) where there is absence of an efficacious alternative remedy, subject to well-recognised exceptions; and (v) where the petitioner has the requisite locus standi, meaning a direct and substantial legal interest in the subject matter.

14. In *Whirlpool Corporation v. Registrar of Trade Marks, (1998) 8 SCC 1*, the Hon'ble Supreme Court held that despite existence of alternative remedy, writ jurisdiction can be exercised in cases of violation of fundamental rights, breach of natural justice, or where the impugned action is wholly without jurisdiction. The relevant part of the said order reads as follows:

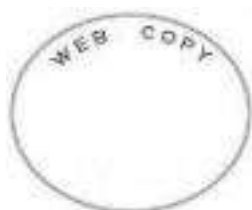
“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where



the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

15. In ***State of Orissa v. Madan Gopal Rungta***, reported in ***1951 SCC 1024***, it has been categorically held that Article 226 cannot be invoked for the purpose of granting a declaratory relief in absence of a legal injury or enforceable right, and writ jurisdiction cannot be exercised in vacuum. The relevant part of the said order reads as follows:

“13. The language of the article shows that the issuing of writs or directions by the Court is founded only on its decision that a right of the aggrieved party under Part III of the Constitution (fundamental rights) has been infringed. It can also issue writs or give similar directions for any other purpose. The concluding words of Article 226 have to be read in the context of what precedes the same. Therefore, the existence of the rights is the foundation of the exercise of jurisdiction of the Court under this article. The judgment of the Orissa High Court under appeal, however, shows that the Judges have decided nothing at all in respect of the rights of the parties. Indeed they have expressly stated that their observations should not in any way be considered as



deciding any of the rights or contentions of the parties raised in the petitions. The whole judgment shows that because of the requirement of Section 80 of the Civil Procedure Code the present respondents could not file a suit against the Government for at least sixty days, the respondent's position should not in the interval be disturbed and accordingly the Court gave the directions in its order of 2-8-1951. If there was any doubt about the nature of the relief desired to be granted by the order of 2nd August the same Judges have made it perfectly clear by their order of 6th of August, wherein they have stated that except for these directions they were not prepared to make any other order on the petitions. The result therefore is that while the Judges declined to investigate and pronounce on the rights of the parties and expressly kept the determination thereof in abeyance in the suit proposed to be filed by the present respondents, they gave directions for interim relief till such suit was filed. It must be noted that with the passing of the order of 2-8-1951, containing directions in the nature of interim relief the petitions were completely disposed of and have not been kept pending for disposal. Those directions embody therefore the final order passed by the Court on these petitions. A preliminary objection was raised about the maintainability of the appeals on the ground that no final orders were passed on the petitions. That objection must fail in view of the fact that with these orders the petitions were disposed of finally and nothing further remained to be done in respect of the petitions. The fact that the operation of the order is limited to three months or a week after the filing of the intended suit does not prevent the order from being final.”



16. The nature of writs under Article 226 includes habeas corpus, mandamus, certiorari, prohibition and quo warranto, each designed to address specific categories of illegality or jurisdictional error. However, their invocation is contingent upon the existence of an identifiable legal wrong.

17. In the present case, the petitioner has approached this Court in the context of two Notices Inviting Tenders issued by the Respondent–Public Health Engineering Department. Admittedly, the petitioner has not participated in the tender process and no decision has been taken by the Respondents either declaring the Petitioner disqualified or rejecting its bid. The challenge is premised solely on the existence of a prior debarment order dated 10.01.2024 passed by another authority and a misapprehension that the same may be considered at the stage of evaluation under Clause 4.8 of the Instructions to Bidders.

18. It is also significant to note that this Court had, vide order dated 04.09.2025, granted interim protection to the petitioner. Despite such protection, the petitioner chose not to participate in the tender process. In such circumstances, the petitioner, having failed to avail the opportunity extended by this Court, cannot now be permitted to maintain the present writ



petition on the basis of a speculative grievance. The conduct of the petitioner clearly indicates a waiver of the opportunity to participate in the tender process.

19. Thus, no concluded administrative action or live adjudicatory cause of action exists at this stage.

20. In *Tata Cellular v. Union of India, reported in (1994) 6 SCC 651*, the Hon'ble Supreme Court held that in contractual and tender matters, judicial review is limited to examining the decision-making process and not the merits of the decision itself, and interference is permissible only where there is arbitrariness, irrationality or malafides in an actual decision. The relevant part of the said order reads as follows:

“94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract.



Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”

21. In ***Michigan Rubber (India) Ltd. v. State of Karnataka, reported in (2012) 8 SCC 216***, the Court held that in tender matters, courts must exercise restraint and should not interfere unless the process is ex facie arbitrary or discriminatory. The relevant part of the said order reads as follows:

“24. Therefore, a court before interfering in



tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"? And

(ii) Whether the public interest is affected?

If the answers to the above questions are in the negative, then there should be no interference under Article 226."

22. It is further observed that the petitioner has not specifically challenged Clause 4.8 of the ITB. From the nature of the reliefs sought, it is evident that the petitioner is, in substance, seeking a direction to render the said clause inapplicable to him. Such a relief would amount to this Court rewriting or modifying the terms of the tender, which is clearly beyond the domain of this Court as the same being impermissible in exercise of writ jurisdiction.

23. It is a settled principle that the terms of a tender are within the exclusive domain of the tendering authority. The Hon'ble Supreme Court in *Afcons Infrastructure Ltd. v.*



Nagpur Metro Rail Corporation Ltd. has categorically held that the author of the tender document is the best person to understand and interpret its requirements, and the Courts must exercise restraint and defer to such interpretation unless it is found to be arbitrary, *mala fide*, or perverse. The relevant part of the said order reads as follows:

“15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.”

24. So far as the reliance placed by the learned counsel for the petitioner on ***M/s. Erusian Equipment & Chemicals Ltd. vs. State of West Bengal & Ors., AIR 1975 SC 266*** and ***M/s. HCL Infosystems Ltd. vs. Bihar State Electricity Board, (2013) 2 PLJR 753***, is concerned, there is no quarrel with the proposition of law laid down therein that an order of

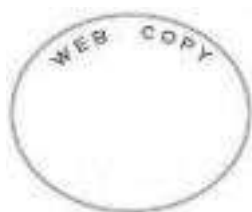


blacklisting/debarment has civil consequences and ordinarily remains confined to the authority passing such order and cannot be mechanically extended by other departments without independent application of mind. However, the applicability of the said principles would arise only when a decision is actually taken by the concerned authority affecting the rights of the petitioner. In the present case, as no such decision has yet been taken by the Respondents and the challenge is founded solely on an misapprehension, the aforesaid judgments do not advance the case of the petitioner at this stage.

25. Thus, at this stage, there is neither any concluded administrative decision nor any crystallised legal injury. The grievance remains contingent upon a future possible event, which may or may not arise depending upon the course of the tender evaluation process.

26. In view of the settled principles of law referred to above, this Court is of the opinion that the present writ petition is founded on a mere misapprehension and does not disclose a live cause of action warranting interference under Article 226 of the Constitution of India at this stage.

27. Accordingly, the present writ application is not maintainable and is accordingly dismissed.



28. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J.)

(Shailendra Singh, J.)

*Gaurav Kumar/-
A.F.R.*

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